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LOS ANGELES BAR ASSOCIATION

(City and County—Organized 1888)

COMMENT BY MR. ORRA E. MONNETTE ON FOLLOWING ARTICLE, "INVESTMENT COUNSEL"

The article prepared by Mr. Edgar Higgins, 120 Broadway, New York, has been submitted to me, in the vernacular of motion pictures, as a pre-view of a theoretical discussion which is provocative in many ways.

Mr. Higgins is undoubtedly qualified to speak upon many angles of investment problems, and does speak with considerable clearness and force. While the fundamental principles of wise choice of investments, diversification of investment, and frequent re-examination of investment securities in the light of conditions changing from day to day, are fundamentally sound and not new in actuality, nevertheless the arguments advanced by Mr. Higgins are quite sound and timely.

All bond and investment houses, and particularly banks with bond departments, must, of necessity, give to their patrons and customers the largest possible service for the conduct of a safe, sound, investment business. If an expert along the lines suggested by Mr. Higgins is to be especially desirable in his individuality and operations, he should not exist as a separate detachment in the way of a Counsellor to be consulted outside of the bond house or bank itself. If he possesses the qualities considered necessary by Mr. Higgins in his special work, then he must be a very necessary personage to be connected directly and immediately with the investment business. It follows as a certainty that the growth and development of this class of business requires the highest type of efficiency and adaptation. There is a constant change in general business conditions which affects all classes of securities, and which requires not only the expert statistician, or highly sensitized judge of values for sale and exchange, but also the association of this expert directly with the executive who is passing daily upon the transactions to which the principles announced by Mr. Higgins must have their pertinent and continuous application.

His article is full of meat, with some phases which should be opened for further discussion and possible amendment.

ORRA EUGENE MONNETTE,
Vice Chairman of the Board of Directors,
Chairman of the Regional Board, Bank of Italy.

Investment Counsel—A New Profession What It Is*

By EDGAR HIGGINS, *Investment Counsel, New York City.*

Twenty years ago the words "Investment Counsel" had never been heard of in this country, and if they had, their meaning would not have been understood or appreciated. Today, "Investment Counsel" is repeated with increasing frequency, and if you should happen to ask, "What is Investment Counsel?" the answer in brief would be, "A new profession." Should you continue, "But what sort of new profession?", you would learn many things to your advantage. If you are a shrewd, intelligent person, a person with sufficient common sense to realize that the security market today is both too technical and too treacherous for the layman to understand, that it is a sort of no man's land, traversed by many winding paths through which only the trained specialist can safely make his way, you will welcome this new profession with open arms and a sigh of relief, turn your investment affairs over to a reliable counsel, and return to your own business with a load off your mind, feeling that your investments are in the hands of a specialist who therefore knows investments far better than you yourself, just as you know your business better than he ever will. This does not, of course, embrace the actual handing over of these securities to the Investment Counsel. The Counsel does not handle the securities at all, neither does he buy or sell securities. The client transacts this part of the business through his own banker or broker. The Counsel merely advises him what to buy and what to sell, and when to buy and when to sell. For an Investment Counsel is to your investments what a doctor is to your health, or a lawyer to your legal problems, and something more, for constant vigilance is given your investments throughout the year.

Why Needed

No sane individual would think of prescribing his own medicine if he were desperately sick. Your normal man will go to an architect when he builds his house. He may know that he wants a living room on the south side and a den behind the dining room, or a fan-light over the door, but he knows his limitations when he runs into drains and sewer pipes. He knows that he knows nothing about these things.

Yet your same normal man, after earning a certain sum of money in his own business, the business he understands, will

*EDITOR'S NOTE: The BULLETIN is fortunate in having obtained the above article by Mr. Higgins, a man whose discussions of investment problems have received editorial comment on both sides of the Atlantic, and whose experience has covered all phases of investment banking and the practical investment of funds.

For many years Mr. Higgins was with the Equitable Trust Company of New York, then was Vice President of Peabody, Houghteling & Company, New York, and later was Assistant to the President of the Guardian Trust Company, Detroit, whose directorate includes Edsel Ford. Mr. Higgins made in England and Scotland an exhaustive study of successful investment methods, interviewing such men as Reginald McKenna, Premier Stanley Baldwin, the Rothschilds and other international bankers. He is now located in New York City, where he is retained by several banks, insurance companies and estates to advise them on their investments.

plunge headlong and invest these hard-earned funds without any idea whatsoever of what he is doing. Perhaps he buys securities on the advice of some bond salesman who has an axe to grind, or perhaps he takes a "tip" on the market from a friend. If he loses a substantial amount, as he probably will, he becomes bitter and refers to the street as a den of wolves and iniquity, and talks of stock manipulations. But the truth is that he is simply getting stung in the security market, the same way he would get stung trying to run any other business he knew absolutely nothing about. And out of this tremendous need for the scientific investing of funds, has sprung Investment Counsel.

"Not Me"

Now there will be many readers of this article who will say to themselves, "Ah! but this does not concern me; I am no wild-cat speculator. I do not invest in doubtful securities; my holdings are all fine, gilt-edge securities, therefore it is absurd to infer that I lose substantial amounts." But wait a moment. The chances are that this careful, conservative, intelligent investor *is* losing large sums of money, because his investments are not bringing him the return he should get, and moreover, it is very probable that his capital is not nearly as safely invested as he fondly imagines.

Example

An actual example of what I mean was recently brought very forcibly to my notice. A certain Insurance Company, whose name for obvious reasons must remain unknown, had invested $4,126,277 in various securities. The company's earning rate for 1926 was 8.28%. Now this 8.28% is comparable with the 8.47% earning rate of the general security market for the same year, as represented by the 40 stocks and 40 bonds comprising the Dow-Jones averages. The earning rate of the clients of a well known firm of Investment Counsellors was 12.33%. It is eviednt therefore, that if the directors had simply bought the same proportionate amounts of the securities comprising the Dow-Jones bond and stock averages, their company would have been better off by $8,000.

Or, if the directors had employed Investment Counsel, their company would have profitted $167,000, and after paying a counsel fee of $20,000, their company would have benefitted $147,000.

Now, to return to the layman reading this. He will probably remark, "But this is astonishing, and it cannot be possible to earn such a high percentage with safety."

No Risk

That is, perhaps, the most astonishing thing of all. The man who employs Investment Counsel runs far less risk with his higher yield than his brother who seems to feel that security lies in a low earning rate. Who for example, among buyers of high grade stocks, would have expected the New York, New Haven & Hartford to fall as it did? But your Investment Counsel could have told him; that is his profession.

Women

In a very interesting booklet on Investment Counsel, A. Vere Shaw says: "Over half of the stockholders of the American Sugar Refining Company, and nearly half of those of the New York, New Haven & Hartford R. R. in 1913 were women. The Continental Insurance Company — the fourth largest fire underwriters in the United States—for a number of years has been one of the most successful of institutional investors. Neither American Sugar common nor New Haven appears on the annual list of holdings of the Continental Insurance Company in 1913 or any subsequent year. Why were so many New England women, trustees and others 'caught' in American Sugar and New Haven when

this insurance company avoided these issues?"

Choice of Investments

On January 1, 1927 there were listed on the New York Stock Exchange alone 1420 bond issues and 1,081 stock issues, with market values $75,543,769,806.

Apart from these issues, there are also about 40,000 different unlisted securities. Not only does the number of American security issues increase by many hundred every year, but now that the United States has become the leading creditor nation in the world, our financial markets are opening to hundreds of additional foreign security issues.

Twenty-five years ago, it was not impossible for a well-informed American investor to know something of the most important and available investment issues. In 1900, there were only 1216 security issues listed on the New York Stock Exchange. Moreover, data on these issues was less voluminous. That situation has gone, never to return.

Bewildering though this vast array of securities is to the intelligent investor, he nevertheless fully appreciates the need of judiciously sifting these thousands of different issues for the comparatively few which will be best suited to his particular needs. Even a slight knowledge of security markets in the McKinley era will impress him with the fact that sound security investments are like old pictures, old books;—that although each year new pictures are being painted and new books written, the large majority of them in time disappear—no one knows where. The work of selecting not merely *good* investments, but the best investments, has consequently become an increasingly serious problem in this country.

Diversification

This thorough research comprising all the technical steps of investigation is applied by your reliable Investment Counsel to all securities, but in addition to choosing the best values he can possibly obtain in the security market for his client, he must see that his client's list is properly diversified.

Just as a successful farmer diversifies his crops, or a banker his loans, so in practice, a skillful investor must distribute his risks.

The British Investment Trusts have as many as 800 different investments. Our large insurance companies—the most extensive investors in America—average 500 different securities. For a fund of $200,000, proper diversification will usually dictate a diversification among 100 different issues. The practical execution of such a program of diversification, taking as it must, not only all industry but the whole world for its province, places demand tor knowledge and judgment which few individual investors possess, or can of their own accord readily obtain.

This is one of the fundamental principles of profitable investment, for no matter how sound a single bond or stock may be at the time of its purchase, unforseen circumstances may cause it to become unprofitable.

Proper Diversification Example:
A $200,000 fund invested in 100 different securities.

Improper Diversification Example:
A $200,000 fund invested in only 10 different securities.

The idea is to prevent any one *event* in any one *industry,* in any one *locality,* affecting more than a small percentage of the investments.

Just as the stability of an insurance company is determined by the distribution of its policy risks, so a sound investment policy demands that the securities be diversified as well as carefully selected. A successful farmer diversifies his crops, and the banker his loans.

Proper diversification is one of the benefits obtained by Investment Counsel.

All these factors imposing as they do,

exhaustive study, the most minute and technical research is necessary to obtain a fine, healthy and productive list of securities.

Vigilance

Once again, under the old regime, the possessor of this fine, thriving list was wont to sit back in his chair, yawn cheerfully, say to himself: "Well, I've a fine, healthy batch of stuff here, and that's a load off my mind. Now, I can forget about it."

But how illogical he is. What he really does forget is that everything in the world changes; nothing stands still. No matter how sound a single bond or stock may appear to be when it is purchased, unforseen circumstances may cause it to become unprofitable.

The investor's task only begins when the original security purchases have been made. Risks and uncertainties which affect investments change constantly. The necessity for investment vigilance is continuous. The fallacious notion that there is such a thing as a "permanent investment" has cost the American investing public millions.

Certainly our large life insurance companies do not suffer from any delusion that securities can be neglected after their purchase. In 1924, the *Equitable Life Assurance Society* sold Chicago, Milwaukee & St. Paul bonds for $1,765,229. By January, 1926, the market value of these same bonds declined to $1,379,575. By its action the company prevented a capital book *loss* of $385,634, or 22%.

During the same year of 1924, the same Assurance Society purchased other bonds of the same railroad for $2,581,605. By January 1926, these later bonds had advanced in market value to $2,710,573—thus securing to the company a capital book *profit* of $128,973, or 5%.

The Carnegie Corporation said in an annual report:

> "The funds of a great endowment can be kept intact only by a systematic revision month by month of all the securities of the endowment and by a continuous process of sale and exchange as circumstances may affect the financial soundness of this or that security."

It is likewise a fallacy that risk can be avoided, and the most satisfactory profits realized, by purchasing and holding any securities which are "gilt-edge." Suppose an investor had bought 4¼% Liberty bonds at 96 in May, 1918, and was forced to sell them a year later; he would have disposed of them for about 85½, thus incurring a capital *loss* of 11%. If, on the other hand, another investor had bough these bonds at 85½ in May, 1920, two years later, in May, 1922, he could have sold them at 100, thus taking a capital *profit* of 17%, or 8½% for each year he had held them.

In the practical work of security investment, as in every other business, there is no magic formula or simple panacea which can be successfully or even safely substituted for exact and extensive knowledge, or practice and constantly informed *judgment*.

Since practically no security remains at exactly the same price, even from one year to *another*, the investor must, whether he desires or not, constantly face the problem of price-depreciation or price-appreciation.

Professor Dawing of Harvard University recently wrote:

> "The general theory of business profits is applicable to investment."

He further stated that the investment of funds is a real business, subject to the rewards of true business foresight and the losses incident to attempts on the part of the poor business manager to invest funds.

This is not self-evident. The schoolteacher, clergyman, lawyer, dry-goods merchant, and shoe manufacturer know enough about their own respective business to feel assured that the ordinary uninitiated could not succeed without long and specialized training. Yet these same men stand ready to embark on one of the most intricate of businesses—that of investment—requiring perhaps the most extensive and far-reaching specialized knowledge of any profession or business.

To compare intelligently, and with a degree of insight which makes the comparison more than a guess, the credit obligations of Sao Paulo and the mortgage bonds of the Chicago & Northwestern Railroad, the debentures of the Detroit Edison Company and the common stock of the General Electric Company require acumen and a breadth of knowledge compared with which the ordinary professional and business judgments are child's play.

And yet it is just such specialized knowledge and acumen which constitute the business of investments, a business upon which many, without training or aptitude, feel qualified to embark with their own savings and those of their relatives and friends.

It is because of the average investor's increasing inability to cope alone and un-

aided with the practical problems of investment under present and prospective conditions, that a new profession has arisen in this country—that of Investment Counsel.

In a letter to the Chairman of the Pujo Money Committee appointed by Congress, J. P. Morgan & Co. said:

"As individuals require the services of lawyers and physicians, so great enterprises require financial diagnosticians who can give counsel as to the world's financial markets, as to what financial policy for the corporation is best calculated to command the confidence and the steady support of the investor."

If corporations need financial counsel, how much more do individuals need counsel as to what investment policy to follow, what securities to buy, sell or hold.

In a recent book, *Investments—A New Profession*, published by the MacMillan Co., the author says:

"The purpose of this book has been to outline the services to which the investor is entitled and the obstacles which prevent the giving of such service. Among the obstacles is the attitude of the ordinary investor himself who little realized his true position.

"Every man needs the matured judgment of a specialist in securities just as he needs a lawyer for law or an engineer to solve an engineering problem.

"Wall Street is noted for giving advice as to what to buy, but rarely as to *when* and *what* to sell.

"The foregoing will indicate that perhaps there is, after all, something new in the methods of choosing investments and watching over them."

A vice president of a large New York City bank, in a public speech said:

"The opportunity has come to me to observe *how a large number of banks* buy their bonds, and I feel quite safe in saying that it is not with the knowledge or by analysis and investigation but by persuasion—I mean by the argument of those who have the bonds for sale."

It is interesting to learn in connection with this that a group of New York upstate banks, feeling that none of them could take enough time to equip themselves as investment specialists, and that no one bank was large enough to afford by itself such a man, decided to join together and have employed an Investment Counsel.

It will be seen from this that Investment Counsel is even needed by banks. How much more, then, is it needed by the average investor?

It may be interesting to listen to the experiences of a large investor who is now a client of an Investment Counsel. He said:

"I heard about this new profession, made up my mind and finally went up to see one. After a few minutes conversation, the Counsel asked me to bring him in a complete list of all the stocks and bonds that I owned, which I did, and left them with him for a few days. I later called in to see him, talked about my economic situation, so as to have my investments fit in with my particular needs. I went back in another few days, and he had written me a letter advising me to sell over half of my securities. He also sent me a list of securities to buy. At first I was amazed, because I formerly only owned about 20 different securities, but the Counsel's list covered about a 100. He persuaded me that it was very much safer, because our first consideration was to prevent any loss of capital. I followed his advice, and asked my bank to carry out the instructions of buying and selling. I advised him what securities I had purchased, with the price, and every month I receive a letter from the Counsel, giving me the market value of my holdings. Frequently he advises me of some particular security to sell, and what to buy in its place. Of course he advises me when bonds are selling above the call price, but more particularly when my securities are over-valued. I am relieved of all anxiety and worry. My income has been increased and my capital is worth very much more, and in every way I am better off."

The Ethics of Practice in the Foreclosure of Assessment Liens

STATEMENT BY THE BOARD OF TRUSTEES

Probably no one phase of practice has been the subject of so much public comment, or has reflected so broadly against the legal profession in Los Angeles County, as has that involved in actions for the foreclosure of assessment liens during the past year. The annoyance to a large portion of the public, growing out of such cases, readily accounts for the complaints filed with the Association's Grievance Committee against attorneys who have engaged somewhat extensively in filing such actions.

The number of such complaints, the abuses to which this practice is peculiarly susceptible, and the unpleasant attitude of the public toward the profession resulting from past cases, have prompted the Trustees of the Association to make this comment in the hope that it may prove helpful in eliminating the disagreeable situation.

The acceptance of employment to file an action for the foreclosure of such a lien is not inherently improper. Discipline of an attorney is merited only when his conduct of such a case violates the canons of ethics in some particular. The decision of the propriety of handling such cases must be left to the judgment and good taste of the individual attorney, as based upon all the circumstances surrounding the employment. We state these rather obvious truths to emphasize the fact that we are not presuming to advise the members of the Bar as to whether they shall or shall not undertake such actions.

The irritating features of the practice are so well known to lawyers as hardly to require recital here, but we wish to mention three which seem particularly to have been involved in accusations against members of the Bar. They are:

First, the filing of suit in cases in which it has not been determined with sufficient definiteness that the defendant has received actual notice of his default and been given a reasonable opportunity to make payment, prior to suit:

Second, the insistence, by the attorney, upon the payment to him by the defendant, of a fee which is greatly disproportionate to the amount in default, and therefore to the extent of the professional responsibility, involved in the case:

Third, the collection of attorney's fees in these actions under circumstances such as to permit the suspicion, at least, that there is occurring an unethical division of fees between the attorney and his client, (i.e., "fee splitting").

The typical case that causes trouble is that in which the defendant defaults on an assessment of a very few dollars, receives his first actual notice of his default when a complaint in foreclosure is served upon him, and then learns that, to clear his property, he must pay costs of suit, frequently involving a proportionately large sum for "title search," and an attorney's fee amounting in many instances to between seventy-five and one hundred twenty-five dollars.

Requirement of what seems to the defendant an exhorbitant fee, combined with the fact that its collection and the settlement of the suit is sometimes made by the plaintiff and not through the plaintiff's attorney, permits the inference that the latter is sharing with his client compensation which is justified only upon the assumption that it pays for the expert professional service of the attorney; to the extent to which this inference is indulged is respect for

lawyers lessened. Human nature will not view with complacency the growth of an original two-dollar assessment into one of a hundred or more dollars; nor will it react happily to the payment of more than two dollars when notice of default would have made a payment in excess of that amount unnecessary.

When such a case occurs, there are sown seeds of all sorts of adverse criticism both justified and exaggerated, the fruit of which is scattered from the aggrieved party to his friends and thus throughout the community. The lamentable fact is that the criticism is centered upon the lawyer, and through the individual lawyer the whole profession may be stigmatized.

Persons having meritorious cases for foreclosure are entitled to the assistance of the profession in the proper enforcement of their rights. But unfortunately our laws prescribing those rights and the procedure for their attainment are such as to make the professional aspects of the handling of these cases pregnant with possibilities for irritation of the public and for unpleasant reflection upon the Bar.

We therefore wish to urge that every attorney to whom such business is offered, scrutinize its origin and surrounding circumstances carefully and assure himself that it is free from the abuses alleged to have been present in many cases hitherto commenced in court; that before filing suit, he exercise *unusual* care to make sure that every defendant has received actual notice of his default and has had a reasonable opportunity to cure it; that the costs claimed have been actually and necessarily incurred; that the attorney's fee demanded is justly due, is commensurate with the work done and with the responsibility involved; and that his relations with his own client are such as to observe, in the finest degree, those proprieties regarding fees which are so essential to the preservation of the best ideals and dignity of the legal profession.

The President's Page

Fellow Members
Los Angeles Bar Association:

THE PLEBISCITE

It is an unusual experience for any Governor to be asked to select ten judges at one time in one county. This circumstance brought out a multitude of candidates. How any Governor would have been able, in the midst of drives, high-pressure methods, political pulling and hauling, to select qualified men without a plebiscite of the bar, it is difficult to conceive. It has been demonstrated by this experience that the only way to counteract such personal and private influences is by a plebiscite of the entire legal profession.

I think it is only fair at this time to state that two of the candidates, Mr. George Moore and Mr. Emmet Wilson, who are said to have stood high in the plebiscite and who are recognized as outstanding men at the bar, for personal reasons found that they would be unable to accept if appointments were tendered, and wired the Governor to that effect. General expressions of approval are heard from members of the bar and the Governor is being heartily commended upon his final selections. While there may be slight differences of opinion with reference to two or three of the group, yet on the whole the selections are conceded by the bar to be thoroughly well qualified and it is felt that the Governor gave the matter of choice his most conscientious, careful and painstaking attention and that his selections were based upon sound considerations. There were perhaps others equally well qualified in several instances, but opportunities no doubt will present themselves for utilizing this excellent judicial material at a future date. In behalf of the Bar Association, I am delighted to extend congratulations to all of the appointees and to the Governor upon the selections made.

The bar, above all, desires an able, conscientious, industrious and courteous bench —judges that are forward-looking and progressive in respect to judicial reforms. The Bar Association is doing its utmost to uphold the dignity of the bench and to cooperate in the work of the courts. The Association extends the hand of welcome to Judges Aggeler, Beecher, Desmond, Fricke, Gould, Montgomery, Schauer, Sproul, Tappaan, Yankwich, Bogue and McDill, and wishes all of them happy and distinguished careers upon the bench.

GOVERNOR PAYS TRIBUTE TO BAR ASSOCIATION AND ADVOCATES JUDICIAL REFORMS

I am sure that all the members of the Bar Association appreciate the tribute paid by Governor Young to the bar in his formal statement issued at the time the judicial appointments were made. He said:

"In arriving at this decision I have conferred with a large number of civic leaders in Los Angeles and vicinity, including many responsible men and women outside the legal profession. I have also been greatly aided by the bar of Los Angeles, both in and outside the city, to whom were furnished from my office lists of the candidates for these appointments, and who have been good enough to send to me at Sacramento their confidential estimates as to the comparative fitness or unfitness of each.

"From the 1350 such lists which I have tabulated I have been greatly struck with the remarkable unanimity of opinion as to the relative qualifications of those whose names were submitted. Some twenty-five or thirty candidates were generally agreed upon as especially well qualified for these positions and of real judicial timber. In subsequent conferences I find an almost unanimous concurrence of citizens generally with the opinions of the bar as expressed in the information furnished me. In fact, with possibly one exception, (also high on the list) I have been able to make my appointments from the twenty men who rank highest in the lists submitted by the bar as well as by the others, whom I have consulted.

* * * * * * *

"With respect to the Municipal Court, I am filling the two available positions by the appointment of Charles L. Bogue and George W. McDill. These men were among the half-dozen most highly recommended by the bar, and have likewise been recommended to me from

many other sources as specially well fitted to render splendid service in their new positions.

* * * * * * *

"Again I desire to express my appreciation for the invaluable assistance received from members of the bar and from many other citizens in helping me to make these appointments. I feel that the Bar Association and the Judicial Council are to be congratulated upon the wholesome spirit of progress and reform with which they are animated. That reforms are needed in our courts is self evident. I feel that with the active co-operation of bench and bar together with the influence of an enlightened public opinion, these reforms will be speedily accomplished."

It is significant to note that the Governor is much concerned regarding the condition of our calendar in Los Angeles County. Naturally as a result of being asked to appoint so many new judges he has given this matter a great deal of study. He apparently expects that the bench will cooperate in the endeavor to bring the work of the courts up to date by the assignment of judges to departments for which they are best fitted. The Governor states:

* * * * * * *

"* * In making all of these judicial appointments I have had in mind the congested condition of the court calendars in Los Angeles County, and I trust that these new judges will be so assigned as to enable them to give the greatest assistance in bringing the work of the courts up to date."

SO-CALLED "SENIORITY RULE" CRITICIZED

With 38 judges of the Superior Court and 26 Municipal Court judges, our courts are becoming unwieldy, and as the business increases and the organization becomes larger and departments of the court more and more numerous, the necessity arises for efficient organization and more centralized control and management in systematizing, allocating and checking up the business of the courts. We have taken a long step in advance in the creation of a Judicial Council. This must be supplemented in large centers where there are numerous judges by a spirit of business efficiency which is not possible under the old method of settling every detail of business management by a meeting of the judges.

Members of the bar and most of the judges have for years condemned the practice of allowing the judges to choose their own departments by seniority of service regardless of peculiar fitness for the department chosen. It is a sad commentary upon our judicial system and an argument often used in condemnation of it that judges prior to elections are prone to utilize their seniority privilege by choosing departments contributing most greatly to publicity. Fortunately under a law passed by the Legislature and by reason of the increased activities of Bar Associations in this state, this unwholesome practice need not be continued. From now on it will be possible for judges to be assigned to departments for which they are best suited and to remain there, becoming so expert in the specialized work of their respective departments that the output of business will be

materially increased and much better accomplished. Under the law referred to, each candidate must run for a certain department of the court. The result will be that judges who do satisfactory work will in most instances have no opposition at all, and if opposed will find it easy to continue themselves in office. This new statute practically means life tenure to judges who are able, industrious and worthy. I believe that the next immediate and outstanding problem in Los Angeles County is to arrive at some fairly satisfactory method of assignment of judges which will supplant the out-of-date, unscientific and inefficient seniority method. I have heard so many criticisms of the so-called "seniority rule" that I have taken occasion to make these comments for the purpose of inviting suggestions as to some other method more in conformance with modern business efficiency.

I strongly suspect that the Governor had the undue limitations of the "seniority rule" in mind when he asked that the new judges "be so assigned as to enable them to give the greatest assistance in bringing the work of the courts up to date."

Personally I believe that either of two methods would be very satisfactory. (1) Let the Presiding Judge exercise his statutory authority in the assignment of business, such authority being supplemented if necessary by rule of Court; or if this method be deemed impracticable, (2) let the Judiciary Committee of the Bar Association, composed largely of past-presidents of the Association, conduct an impartial survey and submit recommendations for adoption by the Judges.

KEMPER CAMPBELL.

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the BULLETIN. *In addition, such announcements serve as a manifestation of good-will toward and co-operation with the* BULLETIN *in its program of constructive endeavor for the welfare of the Bar Association.*

The Political Philosophy of Mr. Chief Justice Taft*

By REUEL L. OLSON *of the Los Angeles Bar*

Professor of Law, University of Southern California School of Law.

INTRODUCTION

The material which has been investigated in coming to the conclusions stated in this study of the political theory of Mr. Chief Justice Taft, consists of his opinions as Chief Justice of the Supreme Court of the United States during the period between the time that he assumed the office of Chief Justice, and June 11, 1923. A complete study would also include his more recent opinions, but those examined afford a wealth of material in the form of a cross section of the Chief Justice's work.

Mr. Taft was nominated to succeed Mr. Chief Justice White, deceased, on June 30, 1921, by President Harding. He was confirmed by the Senate on the same day, and took the oath of office July 11, 1921, assuming his seat upon the bench at the opening of the October Term of that year.[1] During this period of twenty months Mr. Chief Justice Taft wrote seventy-three opinions. Three of them were dissenting opinions, and one other is recorded as "doubting." The total number of opinions written by members of the Supreme Court during the period that the Chief Justice wrote the seventy-three which form the basis of this study, is three hundred ninety-one. In percent the number written by Mr. Taft is 18.4 of the total.[2]

All of the opinions of the Chief Justice written during the period indicated, have been carefully examined. However, many of them do not contain anything to suggest a point of view of importance to political theory. Accordingly, no reference to these appear in this paper. It is only such cases as contain language indicating a certain individuality of interpretation, that have

[1]United States Reports, Cases Adjudged in the Supreme Court, Vol. 257, p. iii.

[2]Volumes 257, 258, 259, 260, 261, and 262 respectively, of the United States Reports, contain 57, 71, 43, 79, 71, and 70 opinions.

*EDITOR'S NOTE: This is the first of a series of articles by Dr. Olson on this subject. Others will appear in the BULLETIN from time to time. The outline of the discussion covered in the series is as follows:

Introduction

I. Sovereignty and Jurisdiction
- A. Sovereignty
  1. Claims of the nation in handling inter-state commerce.
  2. Jurisdiction over foreign corporations.
  3. Two sovereignties coexisting in common territory.
  4. Corporation standing in position of government.
- B. Nature of criminal jurisdiction.
  1. Theories of criminal jurisdiction.
- C. The Jury System.
  1. The jury system in Porto Rico.

II. Due Process and Freedom of Contract.
- A. The Force of Statutes.
  1. May be disregarded by courts.
  2. Non-interference of courts with subjects properly within jurisdiction of other authorities.
- B. Due Process of Law.
  1. Elements of judicial controversy.
  2. What is not a court.
  3. Limits of administrative discretion.
  4. Delegation of legislative power.
  5. Function of administrative board as agency for marshalling public opinion.
- C. Freedom of Contract and the Police Power.
  1. Service Letter Act of Missouri.
  2. District of Columbia Minimum Wage Act.
- D. Methods of Dealing with Picketing.
  1. One representative for each point of ingress and egress.
  2. Requests to withhold patronage.

Conclusion.

proved of the highest value in this study. In the manner in which the law is applied to a given state of facts this individuality of interpretation becomes manifest. It is also shown by the words and phrases selected to make the court's point of view clear. By a study of these materials one may secure an idea of the manner in which a judge regards the problems with which he comes in contact. He si constantly dealing with questions relating to the governmental organization of which he is a part. To a certain extent his past experiences determine this individuality of interpretation.

"Judges are men. Courts are composed of judges, and one would be foolish who would deny that courts and judges are affected by the times in which they live, as well by the defects of those times as by the higher ideals prevailing."[3]

"* * The law-maker is the man of his time, thoroughly saturated with the thoughts of his time, thoroughly filled with the culture that surrounds him, that he works with the views and conceptions which are drawn from his sphere of culture, that he speaks with words that have a century of history behind them and whose meanings were fixed by the sociological process of a thousand years of linguistic development, and not through the personality of the individual."[4]

"* * There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name, have been tugging at them —inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs, a sense of James's phrase of the 'total push and pressure of the cosmos,' which, when reasons are nicely balanced, must determine where choice shall fall. In this mental background every problem finds its setting. We may try to see things as objectively as we please. None the less, we can never see them with any eyes except our own. To that test they are all brought—a form of pleading or an act of parliament, the wrongs of paupers or the rights of princes, a village ordinance or a nation's charter."[5]

Nothwithstanding this alleged inherent tendency to look at issues through the spectacles which the past has placed before our eyes, it is certain that Mr. Chief Justice Taft has always attempted to balance all the interests involved in a particular case impartially, so that a just decision might be reached. The degree of success attained must be judged by a study of all the facts involved. Some years before he became Chief Justice, Mr. Taft succinctly stated the problem of government, and his work upon the bench is the practical application of his theory.

"The great problem of government that is never completely solved and that is changing with changing conditions is how to reconcile the protection of individual rights, helpful to the pursuit of happiness and the welfare of society, with the necessary curtailment of those rights and freedom, by governmental restriction, to achieve the same object."[6]

Moreover, this balancing of interests may profitably be used by the judiciary, in the view of the Chief Justice. Thus, Paragraph two of the Harrison Anti-narcotic Act of December 17, 1914, prohibits the sale of narcotic drugs to persons not having a written order in official form. According to the statute it is not necessary that the party selling the drugs know that their sale is restricted; he may be held liable under the provisions of the Act without such knowledge. In a case involving *scienter* as a necessary element in the indictment and proof of the violation of this Act, Mr. Taft held that the indictment was sufficient without charging that the defendant sold the inhibited drugs knowing them to be such.

"While the general rule at common law was that the scienter was a necessary element in the indictment and proof

[3]William Howard Taft, The Anti-Trust Act and the Supreme Court, Harper & Bros., New York and London, 1914, p. 33.

[4]Joseph Kohler, Lehrbuch Des Burgerlichen Rechts, Vol. I, p. 38, 1906.
Translation by Roscoe Pound, Jurisprudence, Mimeographed sheets, p. 275, Harvard Law School, 1922-1923.

[5]Benjamin N. Cardozo, The Nature of the Judicial Process, Yale University Press, 1921, p. 12.

[6]William Howard Taft, Ethics in Service, New Haven, Yale University Press, 1915, p. 22.

of every crime, and this was followed in regard to statutory crimes, even where the statutory definition did not in terms include it, there has been a modification of this view in respect to prosecutions under statutes the purpose of which would be obstructed by such requirement."[7]

He pointed out that the manner in which Congress had arrived at its conclusions was by a process of balancing of interests.

"* * Its (the Act's) manifest purpose is to require every person dealing in drugs to ascertain at his peril whether that which he sells comes within the inhibition of the statute, and, if he sells the inhibited drug in ignorance of its character, to penalize him. Congress weighed the possible injustice of subjecting an innocent seller to a penalty against the evil of exposing innocent purchasers to danger from the drug, and concluded that the latter was the result preferably to be avoided. Doubtless consideration as to the opportunity of the seller to find out the fact, and the difficulty of proof of knowledge, contributed to this conclusion."[8]

Throughout this study it has been assumed that Mr. Chief Justice Taft has not written anything in the opinions which are credited to him, that he did not consider essential. This means, of course, that dicta will not be met with in the course of this investigation. This assumption is based upon the fact that the limited time which judges have for the consideration of cases, makes it imperative that all superfluous material be excluded from the opinions.

SOVEREIGNTY AND JURISDICTION

Five opinions were written by Mr. Chief Justice Taft between Ocotober 1, 1921, and June 11, 1923, in which the questions of sovereignty and jurisdiction were involved. They were Railroad Commission v. Chicago, Burlington and Quincy Railroad Company[9] and Missouri Pacific Railroad Company v. Clarendon Boat Oar Company[10] decided February 27, 1922; Ponzi v. Fessenden,[11] March 27, 1922; Sloan Shipyards Corporation v. United States Shipping Board Emergency Fleet Corporation,[12] May 1, 1922; United States v. Lanza,[13] Dec. 11, 1922.

The case of *Railroad Commission v. Chicago, Burlington & Quincy Railroad Company* was an appeal from the District court of the United States for the Eastern District of Wisconsin to review a decree which enjoined a state railroad commission and other state officials from interfering with the maintenance of intrastate rates as fixed by the Interstate Commerce Commission. By federal statute the Interstate Commerce Commission was authorized so to adjust rates that carriers as a whole or by groups should earn a fixed net income on their railway property. Pursuant thereto the Interstate Commerce Commission ordered an increase of 35 percent on interstate freight rates and 20 percent on interstate passenger rates. Thereupon, certain carriers applied to the Wisconsin railroad commission for correspondingly increased rates on intrastate traffic. The Commission of the State granted a 35 percent increase on intrastate freight rates, but refused the 20 percent increase on passenger rates because to grant such an increase would conflict with a Wisconsin statute which prescribed a maximum passenger rate of two cents per mile. However, the Interstate Commerce Commission ordered an increase of 20 percent on intrastate passenger rates. The Wisconsin Railroad Commission and other state officials sought to prevent the maintenance of the fares ordered by the Interstate Commerce Commission. The carriers thereupon applied for an injunction against the State Railroad Commission and the other State officials, in order that the fares ordered by the Interstate Commerce Commission might be effective.

The issue, therefore, is whether or not a State may determine what its intrastate passenger rates may be. Is it free to set these rates as it sees fit, or must it allow the Interstate Commerce Commission to permit a scedule which calls for rates in excess of those allowed by State statute? The essence of the issue relates to sovereignty and jurisdiction; they form its very heart.

Mr. Taft admits that, under the Constitution, "interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties."[14] He explains, however, that the proper authority of a state

[7]United States v. Balint, 258 U. S. 250, Mar. 27, 1922, p. 251, 252.
[8]Idem, p. 254.
[9]257 U. S. 563.
[10]257 U. S. 533.
[11]258 U. S. 254.
[12]258 U. S. 549.
[13]260 U. S. 377.
[14]257 U. S. 563, 588.

has not been violated if interstate and intrastate commerce "are so mingled together that the supreme authority, the nation, cannot exercise complete, effective control over interstate commerce" without the incidental regulation of intrastate commerce.

> "It is objected here, as it was in the Shreveport Case, that orders of the Commission which raise the intrastate rates to a level of the interstate structure violate the specific provisio of the original Interstate Commerce Act, repeated in the amending acts, that the Commission is not to regulate traffic wholly within a state. To this, the same answer must be made as was made in the Shreveport Case (234 U. S. 342, 358), that such orders as to intrastate traffic are merely incidental to the regulation of interstate commerce, and necessary to its efficiency. Effective control of the one must embrace some control over the other, in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them. Commerce is a unit and does not regard state lines, and while, under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the nation, cannot exercise complete, effective control over interstate commerce, such incidental regulation is not an invasion of state authority or a violation of the provisio."[15]

It is suggested that what the Chief Justice here makes reference to as being affected by different sovereignties, and within the prescribed area of the respective sovereignties, might be made clearer if the word 'sovereignty' were dropped altogther. This is also true of that term in common usage. The suggestion is ventured that the term 'sovereignty' is often applied to a large variety of circumstances and may mean one thing at one time and quite another thing at another time. What the language of the Chief Justice really amounts to in this case is that the nation as a whole has certain claims in the handling of interstate commerce, that these claims cannot be satisfied if these particular intrastate passenger rates here involved remain lower than the rate prescribed by the Interstate Commerce Commission, that there must be a division of labor and centering of responsibility in order to meet the greatest number of demands, and that the authorities of the nation are the proper authorities for determining this particular question.

The statement that incidental regulation of intrastate rates is not an invasion of state authority or a violation of the proviso of the original Interstate Commerce Act, repeated in the amending acts, that the Commission is not to regulate traffic wholly within a state, must be further refined before it correctly represents the facts. The facts of this case show that the state commission was enjoined from interfering with the order of the Interstate Commerce Commission affecting intrastate passenger rates. The state commission was acting under a statute. It is difficult to conceive of a clearer case of invasion of state authority, if it be granted that state authority is concerned with the determination of intrastate passenger rates. The point is that the nice adjustments which must be made in getting the business of government done, limit and define the spheres of control of the different agencies of government. There is a constant application of the principle of division of labor, for to the several agencies of government are assigned particular tasks. Would not a frank recognition of this be helpful and get us further than does the use of the term 'sovereignty'? Is it not time to abandon the conventional manner of statement and adopt a mode more nearly consistent with the facts?

The second of these cases dealing with the question of jurisdiction arose by reason of the claim that it is a lack of due process of law for a state statute of procedure to fail to furnish a person, within the limits of the state, power to sue a non-resident corporation and take judgment for a cause of action arising in another state. That such a contention should be urged is indicative of a growing belief that it is the proper task of the legal order to take cognizance of causes in the best manner to secure justice rather than to regard the existence of state lines and the existence of different rules of procedure as in themselves determining whether or not a remedy should be granted. Though the subject matter of this case extends only to

[15]257 U. S. 563, 588.

the United States and several of the individual states, the principle involved, if carried to its logical conclusion, would mean much in the maintenance of the legal order of the world. It is to be noted, however, that the claims here pressing for recognition, are left unrecognized by the decision of the case. But to say that they may not some day be accorded full recognition, would be a negation of the history of past development.

The plaintiff, the Missouri Pacific Railroad Company, a Missouri corporation, sued the defendant company, the Clarendon Boat Oar Company, a New York company, for damages in the district court of Richland parish, Louisiana, for the breach of an affreightment contract entered into in the state of Arkansas and to be performed in that state. In announcing the decision of the court, Mr. Chief Justice Taft declared that "it is frivolous to claim that a statute of procedure, by its failure to give jurisdiction over foreign corporations, in transitory actions arising in another state, constitutes a lack of due process of which plaintiff in error can complain."[16]

> "* * Under paragraph 2 of article 4 of the Federal Constitution, the citizens of each state are entitled to all privileges and immunities of citizens in the several states. This secures citizens of one state the right of resort to the courts of another, equally with the citizens of the latter state; but where the citizens of the latter state are not given a process for reaching foreign corporations, it is not apparent how non-citizens can claim it. Provision for making foreign corporations subject to service in the state is a matter of legislative discretion, and a failure to provide for such service is not a denial of due process. Still less is it incumbent upon a state, in furnishing such process, to make the jurisdiction over the foreign corporation wide enough to include the adjudication of transitory actions not arising in the state. Indeed, so clear is this that, in dealing with statutes providing for service upon foreign corporations doing business in the state upon agents whose designation as such is especially required, this court has indicated a leaning toward a construction, where possible, that would exclude from their operation causes of action not arising in the business done by them in the state."[17]

It is conceivable that the particular circumstances of the case would expedite justice if the action were prosecuted in the Louisiana court by the Missouri corporation against the defendant New York concern for damages for the breach of the affreightment contract entered into in the state of Arkansas and to be performed in that state. But it is not probable that such would be the result in a majority of cases. The interests to be realized by providing for a definite manner of procedure, therefore, overbalance those which would be secured by giving a state jurisdiction over foreign corporations in transitory actions arising in another state. The interesting thing about the case is that the claim which is advanced for recognition here; namely, that it is a lack of due process for a state statute of procedure to fail to furnish a person, within the limits of the state, power to sue a non-resident corporation and take judgment for cause of action arising in another state, indicates the point of view that it is the proper task of the legal order to take cognizance of causes in the best manner to secure justice rather than to regard the existence of different rules of procedure as in themselves determining wether or not a remedy should be granted.

The case of *Ponzi v. Fessenden*[18] raised the question as to whether or not a prisoner, with the consent of the Attorney General, while serving sentence imposed by a district court of the United States, might be lawfully taken on a writ of habeas corpus directed to the master of the House of Correction who, as Federal agent under a mittimus issued out of said district court, has custody of such prisoner, into a state court, in the custody of said master, and there put to trial upon indictments there pending against him. The Federal district court had first taken custody of Ponzi. He pleaded guilty, was sentenced to imprisonment, and was detained under United States authority to suffer the punishment imposed. Then the state officers sought to take him into a state court for trial upon indictments there pending against him.

> "* * Until the end of his term and

[16]Missouri Pacific Railroad Company v. Clarendon Boat Oar Company, 257 U. S. 533, 536.

[17]257 U. S. 533, 535.

[18]258 U. S. 254.

his discharge (from Federal custody), no state court could assume control of his body without the consent of the United States. Under statutes permitting it, he might have been taken, under the writ of habeas corpus, to give evidence in a Federal court, or to be tried there, if in the same district, or be removed by order of a Federal court, to be tried in another district without violating the order of committment made by the sentencing court. This is with the authority of the same sovereign which committed him.

"There is no express authority authorizing the transfer of a Federal prisoner to a state court for such purposes. Yet we have no doubt that it exists and is to be exercised with the consent of the Attorney General. In that officer, the power and discretion to practise the comity in such matters between the Federal and state courts is vested. * * * By paragraph 367, Revised Statutes, the Attorney General is authorized to send the Solicitor General or any officer of the Department of Justice 'to any state or district in the United States in any suit pending in any of the courts of the United States or in the courts of any state or to attend to any other interests of the United States.

"This recital of the duties of the Attorney General leaves no doubt that one of the interests of the United States which he has authority and discretion to attend to through one of his subordinates in a state court under paragraph 367, Revised Statutes, is that which relates to the safety and custody of United States prisoners in confinement under sentence of Federal courts."[19]

"We live in the jurisdiction of two sovereignties, each having its own system of courts to declare and enforce its laws in common territory. It would be impossible for such courts to fulfil their respective functions without embarrassing conflicts unless rules were adopted by them to avoid it. The people for whose benefit these systems are maintained are deeply interested that each system shall be effective and unhindered in its vindication of its laws. The situation requires, therefore, not only definite rules fixing the powers of the courts in cases of jurisdiction over the same persons and things in actual litigation, but also a spirit of reciprocal comity and mutual assistance to promote due and orderly procedure."[20]

The first two lines of the paragraph last quoted show definitely that there are two sovereignties coexisting in common territory, according to the point of view of the Chief Justice. But an assignment of claims to be secured, has been made to each sovereignty in accordance with the principle of the division of labor. It is in point to ask what there is to prevent three or more sovereigns from operating in common territory, assuming that the proper constitutional basis for the delimiting of functions has been properly laid. This is of importance in international administration to a greater extent than may be at present generally realized.[21]

The case of the United States v. Lanza[22] is another which calls attention to the fact that there are two sovereignties within the same territory. Laws had been enacted by the State of Washington to secure prohibition and the question was whether or not a conviction by a court of Washington of the offense against the State was not a conviction of the different offense against the United States and therefore double jeopardy. According to well established principles, it was held that there was no double jeopardy involved. The language of Mr. Chief Justice Taft with reference to the two sovereignties, is significant.

"We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject-matter within the same territory. Each may, without interference by the other, enact laws to secure prohibition, with the limitation that no legislation can give validity to acts prohibited by the Amendment. Each government in determining what shall be an offense against peace and dignity is exercising its own sovereignty, no that of the other.

"It follows that an act denounced as

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[19]258 U. S. 254, 261-263.

[20]258 U. S. 254, 259.

[21]Kerr, Philip, The Only Road to International Peace, in *The Prevention of War*, by Philip Kerr and Lionel Curtis, Yale University Press, 1923, p. 69.

[22]260 U. S. 377.

Case Notes*

WILLIAM E. BURBY *of the Los Angeles Bar*
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CITIZENSHIP—THE QUESTION OF ITS DESCENT TO FOREIGN-BORN CHILDREN OF NON-RESIDENT CITIZENS—ANALOGY TO DESCENT OF PROPERTY.

been a citizen of the United States from birth, have a family of his own children some of whom are aliens and others of whom are citizens?

Held: When he, as a citizen of the United States because of his being a son of a father born within the United States, has begotten children abroad before he lived in the United States at all, and then has gone to the United States to reside and subsequently returned abroad and had more children there.

Concerning which Mr. Chief Justice Taft in *Weedin, Commissioner of Immigration* v. Chin Bow, 47 Sup. Ct. Rep. 772 (June 6, 1927) said: "As this is entirely within the choice of the father, there would seem to be no reason why such a situation should be anomalous. As the father may exercise his option in accordance with the law, so citizenship will follow that option."

The present case, habeas corpus in an application for admission into the United States at Seattle, involved an interpretation of section 1993 of the Revised Statutes (Comp. St. par. 3947), which is as follows:

> "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

It was held that "shall not descend to children whose fathers never resided in the United States" means that the *descent* of citizenship is to be regarded as taking place at the time of the birth of the person to whom it is to be transmitted, and that the words, "the rights of citizenship shall not descend to persons whose fathers have never been resident in the United States," are equivalent to saying that fathers may not have the power of transmitting by descent the right of citizenship until they shall become residents of the United States.

"The phrase (re descent of citizenship rights) is borrowed from the law of property," said the Chief Justice. "The descent of property comes only after the death of the ancestor. The transmission of right of citizenship is not at the death of the ancestor but at the birth of the child, and it seems to us more natural to infer that the conditions of the descent contained in the limiting proviso, so far as the father is concerned, must be perfected and have been performed at that time."

The opposing view was disposed of as follows:

"The other view is that the words, 'have never been resident in the United States,' have reference to the whole life of the father until his death, and therefore that grandchildren of native-born citizens, even after they, having been born abroad, have lived abroad to middle age and without residing at all in the United States, will become citizens, if their fathers born abroad and living until old age abroad shall adopt a residence in the United States just before death. We are thus to have two generations of citizens who have been born abroad, lived abroad, the first coming to old age, and the second to maturity, and bringing up of a family without any relation to the United States at all until the father shall in his last days adopt a new residence. We do not think that such a construction accords with the probable attitude of Congress at the time of the adoption of this proviso into the statute. Its construction extends citizenship to a generation whose birth, minority, and major-

*EDITOR'S NOTE: The BULLETIN will be pleased to accept for publication reviews of, and comments on, recent decisions, and members of the bar are urged to co-operate with Mr. Burby in effectuating the maintaining of *Case Notes* as a noteworthy feature of the BULLETIN. Reviews should be mailed to the office of Mr. Burby, 3660 University Avenue.

have all been out of the United States and naturally within the civilization and environment of an alien country. The beneficiaries would have evaded the duties and responsibilities of American citizenship. They might be persons likely to become public charges or afflicted with disease; yet they would be entitled to enter as citizens of the United States."

On another phase of the general subject, attention is directed to the recent article by Dean Wigmore in the Illinois Law Review of April, 1927, under the title, "Domicile, Double Allegiance, and World Citizenship," and to comments thereon by Ernst Freund and William M. Garvey in the June, 1927, number of the Illinois Law Review.

R. L. OLSON.

DAMAGES—RECOVERY FOR MEDICAL ATTENTION.

Action brought by infant for personal injuries sustained as the result of being struck by defendant's car. At the time of the injury plaintiff was five years of age. Recovery in the lower court included the cost of necessary medical care. *Held*, it was improper for the court to include as an element of plaintiff's damage, the necessary cost of medical care. *McManus v. Arnold Taxi Corporation et al.*, 52 C.A.D. 944, April 7, 1927.

The court reached its decision in the instant case on the theory that the parent and not the child is primarily liable for the cost of medical care. It is granted that the parent could bring an action against a tort-feasor and recover any damage suffered in this respect. In such action, however, the defendant could defend on the ground of contributory negligence. Such a defense would prevail if the parent was negligent in allowing the child to be on the street unattended. If recovery was allowed in the instant case as claimed by the plaintiff the defendant would be deprived of his right to avail himself of this defense.

As pointed out by the court, there are some recognized exceptions to the above rule. Where the child is legally bound to

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Book Reviews

By HARRY GRAHAM BALTER *of the Los Angeles Bar*

CALIFORNIA REAL ESTATE PRINCIPLES AND PRACTICE; By George Schneider, lecturer on Real Estate, University of Southern California, 1927; XIX and 921 Pages; Prentice-Hall, Inc., N. Y.; $10.00.

Mr. Schneider is lecturer on Real Estate at the University of Southern California. His offering on *California Real Estate* is worthy of note.

"The purpose of this book is to present in a comprehensive, yet practical manner the principles governing ownership, control, transfer, and valuation of real property and real estate securities. It is intended as a text book for colleges and for classes in real estate and as a reference book for those actually engaged in the real estate business, or whose interests bring them in contact with real estate transactions.

"It is not a lawbook, but it necessarily includes discussion of many of the legal principles governing real estate transactions. In using it, the reader is cautioned to remember that the laws are in a state of constant change and evolution. Each time the Legislature of the State convenes, new laws, or amendments to existing ones, affecting real property, are likely to be enacted. * * * * *"

The volume is really very helpful. It covers a very extensive field. A survey of the chapter headings should give one a glimpse of the subject matter treated by the author. We find:

Real and Personal Property,
Estates in Real Property,
Titles to Estates in Real Property,
Encumbrances and Liens,
Taxes and Assessments,
Mechanics' Liens,
Notes and Mortgages,
Deeds of Trust,
Mortgagee's Interest in Insurance,
Contracts,
Exchange Agreements,
Options,
Land Contracts,
Auction Sales,
Deeds,
Powers of Attorney,
Homesteads,
Title Closing and Escrows,
Title Insurance,
The Torrens System of Land,
Title Registration,
Brokerage,
Leases and Rentals,
Valuation of Real Estate, and
Real Estate Securities.

It is apparent that the discussion is fully as valuable to the attorney as to the business man connected with real estate matters. It is interesting in this connection to note that the real estate interests in this state are openly approving and sponsoring a new law to be proposed before the 1929 Legislature, which will require all real estate brokers and salesmen to undergo comprehensive examinations intended to test the knowledge of the applicant concerning the principles of real estate practice and of the property laws of the state of California.

The author's treatise is essentially a practical handbook, sacrificing theory for practical exposition. Note, for example, the detail with which the matter of apportionment of fees in "Title Closing and Escrows" is treated:

APPORTIONMENT OF FEES

"* * The customary apportionment of escrow expenses applying to the sale of property in Los Angeles and its vicinity is essentially in accordance with the following schedule:

"SELLER PAYS:

"1. Escrow fee, or one-half of total fee, including fee for new incumbrance.

"2. Title charges.

"3. Municipal lien report.

"4. Charge for drawing deed.

"5. Cost of transfer of fire insurance, if premium is pro-rated.

"6. Charge for recording mortgage or deed of trust, if taken as part of consideration for deed.

"7. Notarial fees on instrument acknowledgment by seller.

"8. Cost of drawing and recording any other instruments necessary on part of seller to complete escrow.

"BUYER PAYS:

"1. Fee for new incumbrance; or one-half of total fee, including fee for new incumbrance, where fees are divided equally between buyer and seller. No fee where

seller pays all of escrow fee and no new incumbrances created.

"2. Charge for showing title in buyer's name in evidence of title (called new owner's fee).

"3. Charge for recording deed.

"4. Charge for showing mortgage or deed of trust in evidence of title.

"5. Cost of transfer of fire insurance if premium is pro-rated.

"6. Notarial fee on instruments acknowledged by buyer.

"7. Charge for mortgage clause on fire insurance policy.

"8. Charge for drawing of mortgage or deed of trust.

"9. Cost of drawing and recording any other instruments necessary on part of buyer to complete escrow, purchase-money mortgage, or deed of trust. * * * " (Page 329.)

An appendix, containing nearly 200 useful forms incident to real estate practice, selected with a view of the differences in practice which prevail throughout certain districts of the State, should be a welcome addition to the book.

Although the volume is one essentially for those intimately associated with the real estate business, whether from a brokerage or financial angle, its usefulness to the lawyer should not be underestimated. A lawyer can much more intelligently advise his client as to the law involved in any real estate matter, when he himself fully understands the manner in which any transaction of that nature is actually conducted.

CORPORATE RESOLUTIONS; Isabell Drummond, A.B., L.L.B.; Member of the Philadelphia Bar and Assistant City Solicitor of Philadelphia; 1926; XVIII and 325 pages; The Ronald Press Co., New York.

If the author's claim be correct, this is the first book of this character to be published. It consists of 359 corporate resolutions and corporate notations. The forms are not supplemented by any discussion, but there are citations in the foot notes to various cases wherein the resolutions set out have been judiciously treated.

PART I discusses the History and Analysis of the Law Governing Corporate Resolutions.

PART II, Resolution Precedents, consists of—

Sec. 1, Stockholders' Resolutions;

Sec. 2, Directors' Resolutions Pertaining to Internal Transactions;

Sec. 3, Directors' Resolutions Affecting Third Parties;

Sec. 4, Corporate Notices.

The Resolutions and Notices cover a surprising variety of incidents of corporate life. For example, on page 170, we find a form of resolution of *Expression of Sympathy to Injured Board Member.*

The resolutions are apparently for par stock corporations, for we find no resolutions dealing with the special aspects of a no-par stock corporation as such, which is an increasingly popular form of corporate structure.

The volume should certainly be of some value to corporate secretaries and to corporation attorneys.

The forms submitted seem to be carefully chosen for their legal soundness. A word of caution should, however, be given. Being a general treatment, there is not taken into consideration the peculiarities of the statutes of each particular state, with reference to corporations of that state. Although the laws of all the states may be essentially alike in this respect, still each state has its own peculiar twists and angles; and particularly when it comes to corporate resolutions which are often a matter of stricti juris, the statutes of such state should be closely followed.

Apart from this, the book should certainly be a valuable one as a guide, at least, if not as an aboslute source book.

CASE NOTES

(Continued from Page 26)

pay for such expense, recovery by the child should be allowed (200 Mo. 107, 98 S.W. 509). In the instant case because of sections 34 and 35 of the Civil Code the obligation to pay could not be enforced against the child. Neither would it be enforceable against his estate for he was not under guardianship.

W. E. BURBY.

CHIEF JUSTICE TAFT

(Continued from Page 22)

a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each. The Fifth Amendment, like all the other guaranties in the first eight amendments, applies only to proceedings by the Federal Government, Barron v. Baltimore, 7 Pet. 243, and the double jeopardy therein forbidden is a second prosecution under authority of the Federal Government after a first trial for the same offense under the same authority. Here the same act was an offense against the State of Washington, because a violation of its law, and also an offense against the United States under the National Prohibition Act. The defendant thus committed two different offenses by the same act, and a conviction by a court of Washington of the offense against that State is not a conviction of the different offense against the United States and so is not double jeopardy."[23]

NOTE: The next installment will begin with "1. Sovreignty and Jurisdiction. 4. Corporation standing in position of government.

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